Supreme Court, U.S.
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OFFICE OF THE CLERK

No. ____

In the
Supreme Court of the United States

Chapman Children's Trust II,

Petitioner,

v.

John E. Potter, Postmaster General,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

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PETITION FOR WRIT OF CERTIORARI

Kent Canada
Hancock & Canada, LLP
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Amarillo, Texas 79101

(806) 373-1713
Attorney for Petitioner

QUESTION PRESENTED

Whether the Federal Circuit's reliance on subjective testimony provided by the Postal Service's contracting officer regarding the existence of an implied-in-fact contract was arbitrary, capricious or an abuse of discretion in conflict with this Court's precedents?

PARTIES TO THE PROCEEDING

Petitioner is: Chapman Children's Trust II, a Texas trust.

Respondent is: JOHN E. POTTER, POSTMASTER GENERAL.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Chapman Children's Trust II, respectfully petitions for a *writ of certiorari* to review the Judgment of the Court of Appeals for the Federal Circuit ("the Federal Circuit.")

OPINION BELOW

The Judgment of the Federal Circuit is not reported. The Judgment is reproduced in Petitioner's Appendix (hereinafter "App.") at 2a. The order denying panel rehearing and denying rehearing *en banc* is not reported. The order denying panel rehearing and denying rehearing *en banc* is reproduced in App. at 3a - 4a.

The decision of the United States Postal Service Board of Contract Appeals is set forth in App. at 5a -13a.

The decision of the contracting officer is set forth in App. at 14a - 18a.

JURISDICTION

Judgment of the Federal Circuit was entered on September 16, 2004, and the order denying panel rehearing and rehearing *en banc* issued on November 30, 2004. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1254(1).

STATEMENT OF THE CASE

The proceedings below.

The United States Postal Service failed to pay Petitioner $38,428.00 alleged to be due under an implied-in-fact contract, which was formed in conversations between George Chapman, on behalf of Petitioner, and Larry Andrews, contracting officer, on behalf of the Postal Service.

In a June 20, 2001, decision, Larry Andrews notified Petitioner of the final decision of the contracting officer denying the Petitioner's claim for the $38,428.00. App. at 14a. The decision of the Contracting Officer was timely appealed to the United States Postal Service Board of Contract Appeals as PSBCA No. 4822. The Board rendered its adverse decision on September 11, 2003, App. at 5a, and timely appeal of that decision was made to the United States Court of Appeals for the Federal Circuit.

On appeal, the Federal Circuit affirmed the Board of Contract Appeal's Decision in a per curiam decision by Circuit Judge Newman, Circuit Judge Friedman, and Circuit Judge Schall. App. at 2a. The Federal Circuit denied a petition for rehearing and a petition for rehearing *en banc* on November 30, 2004. App. at 3a.

Statement of the Facts.

On or about September 13, 1999, George Chapman, on behalf of Petitioner, and Larry Andrews met in person to discuss the purchase and sale of the underlying tract upon which the Jordan Station would subsequently be built in Amarillo, Texas. On that date, George Chapman set forth a proposal for the water and sewer lines for the Post

Office tract along with a tract immediately south of the Post Office tract to be constructed in a loop around the outside boundaries of both tracts. The implied-in-fact Contract required the Postal Service to pay its pro rata share of the engineering and construction costs of a water and sewer system servicing the Jordan Station in Amarillo, Texas.

The Postal Service partially performed its obligations by paying $4,007.15 to Keys & Shehan Engineering, LLC for Invoice 1032. The Remittance Advice is dated July 12, 2000, and it was issued at the direction of Larry Andrews.

Subsequently, after Petitioner had fully performed its obligations, the Postal Service, in an apparent cost cutting decision, refused to pay the $38,428.00, which represented the Postal Service's *pro rata* share of the construction of the water and sewer systems now presently being used by the Postal Service.

The Federal Circuit's Decision.

In a unanimous decision, the Federal Circuit affirmed the decision of the Board of Contract Appeals.

The decision of the Federal Circuit clearly affirms the Board of Contract Appeals' reliance on the subjective testimony of the contracting officer to defeat the Petitioner's claim of an implied-in-fact contract.

The Federal Circuit failed to properly rule on a fundamental issue of contract law.

REASON FOR GRANTING THE WRIT

THE FEDERAL CIRCUIT'S RELIANCE ON THE SUBJECTIVE TESTIMONY OF THE CONTRACTING OFFICER VIOLATES THE FUNDAMENTAL DUTY OF THE GOVERNMENT TO PROTECT THE SANCTITY OF CONTRACTS AS ESTABLISHED BY THIS COURT'S PRECEDENTS.

Alexander Hamilton believed it was a principal function of government to protect private property and the sanctity of contracts.

Petitioner fully performed its duties. Larry Andrews, the Postal Service representative, directed partial payment be made to the Petitioner. Larry Andrews did not communicate to Petitioner that he, (Larry Andrews), subjectively, did not believe there was a contract.

If a man may defeat a contract by revealing his subjective, undisclosed beliefs or intentions after full performance by the other party, then, truly, "Never can there come a fog too thick, never can there come mud and mire too deep, to assort with the groping and floundering condition . . ."[1] into which the Courts will descend.

The source of the obligation of both express contracts and contracts implied in fact is the manifested intention of the parties. However, the conduct of a party

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1 Dickens, Charles, *Bleak House,* Modern Library New York 1977.

may manifest assent even though he does not in fact assent.[2]

These principles have been recognized by this Court in *Hercules, Incorporated v. United States,* 516 US 417, 424 116 SCt 981 (1996):

> An agreement implied in fact is "founded upon a meeting of minds, which, although not embodied in an express contract, is inferred, as a fact, from conduct of the parties showing, in the light of the surrounding circumstances, their tacit understanding. *Baltimore & Ohio R. Co. v. United States, 261 U.S. 592, 597, 43 S.Ct. 425, 426-427, 67 L.Ed. 816 (1923).*

"A party cannot avoid the legal consequences of his acts by protesting, at the time he does them, that he does not intend to subject himself to such consequences." *United States v. Lamont,* 155 US 303, 310 (1894).

In the present case, the Petitioner alleged and proved all the elements of an implied-in-fact contract. The evidence was ignored by the Board of Contract Appeals, which, instead, erroneously accepted as conclusive evidence the undisclosed, subjective belief of the Respondent's contracting officer. The Board succinctly set forth the issue and made clear its reliance on the undisclosed, subjective intent of the contracting officer on page 7 of the Opinion, App. at 12a, which reflects:

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[2] *See, Baltimore & O RR v. United States,* 261 US 592 (1923).

> The issue before the Board is whether there was, in fact, a contract between the parties, and the Board may consider, and has considered, both the fact that the payment was made and the Respondent's reason for making it – i.e., the belief by the contracting officer that the payment represented the Postal Service share of costs associated with designing the sewer line along Amarillo Boulevard.

This subjective belief was not communicated to Petitioner.

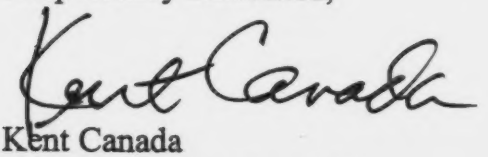
Rather than being denied the benefit of its contract because of thoughts not communicated by the contracting officer, Petitioner is entitled to a ruling "evaluated from the point of view of a reasonable person, considering all the attending circumstances." *Wrench LLC v. Taco BellCorp,* 256 F3d 446 (6th Cir. 2001), *cert. den.* 534 US 1114 (2002).

CONCLUSION

This Court, fundamental principles of law, and the institution of free enterprise in American commerce demand claims to implied-in-fact contracts be judged from the objective conduct of the parties and not by the undisclosed, subjective intent of any party.

For this reason, the petition for *writ of certiorari* should be granted and the Judgment of the Federal Circuit should be reversed.

Respectfully submitted,



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APPENDIX

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NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record

United States Court of Appeals for the Federal Circuit

04-1078

CHAPMAN CHILDRENS TRUST II,
Appellant,

v.

John E. Potter,
POSTMASTER GENERAL,
Appellee.

JUDGMENT

ON APPEAL from the UNITED STATES POSTAL SERVICE BOARD OF CONTRACT APPEALS

IN CASE NO(S). 4822

This CAUSE having been heard and considered, it is

ORDERED and ADJUDGED: AFFIRMED. See Fed. Cir. R. 36

Per Curiam (NEWMAN, Circuit Judge, FRIEDMAN, Senior Circuit Judge, and SCHALL, Circuit Judge).

ENTERED BY ORDER OF THE COURT

DATED: Sep 16 2004

s\Jan Horbaly
Jan Horbaly, Clerk

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

04-1078

CHAPMAN CHILDREN'S TRUST II,

Appellant,

v.

John E. Potter, POSTMASTER GENERAL,

Appellee.

ORDER

United States Court of Appeals for the Federal Circuit

ORDER

A petition for rehearing en banc having been filed by the APPELLANT, and the matter having first been referred as a petition for rehearing to the panel that heard the appeal, and thereafter the petition for rehearing en banc having been referred to the circuit judges who are in regular active service,

UPON CONSIDERATION THEREOF, it is

ORDERED that the petition for rehearing be, and the same hereby is, DENIED and it is further

ORDERED that the petition for rehearing en banc be, and the same hereby is, DENIED.

The mandate of the court will issue on December 7, 2004.

FOR THE COURT,
_s\Jan Horbaly__
Jan Horbaly, Clerk

Dated: November 30, 2004

cc: Kent Canada
James D. Colt

CHAPMAN CHILDRENS TRUST VS USPS, 04-1078 (BCA - 4822)

****
* Note: Pursuant to Fed. Cir. R. 47.6, this order is *
* not citable as precedent. It is a public record. *
****

UNITED STATES
POSTAL SERVICE

BOARD OF CONTRACT APPEALS 2101 Wilson Boulevard,

Suite 600

Arlington Va. 22201-3078
703-812-1900 Fax: 703-812-1901

Appeal of September 11, 2003

CHAPMAN CHILDREN'S TRUST II

PSBCA No. 4822

APPEARANCE FOR APPELLANT:

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Hancock & Canada LLP
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Amarillo, TX 79105-2330

APPEARANCE FOR RESPONDENT:

Judith K. Zehner, Esq.
Southwest Law Office
United States Postal Service
P. O. Box 227078
Dallas, TX 75222-7078

OPINION OF THE BOARD

Appellant, Chapman Children's Trust II, has appealed from the decision of the contracting officer denying its claim for a *pro rata* share of the cost of installing water and sewer piping on a site previously

purchased from Appellant by Respondent, United States Postal Service. Appellant alleges that Respondent breached an implied-in-fact oral contract between it and Appellant. Respondent contends that no contract ever came into being between the parties regarding the installation of utilities. The appeal is being decided on the record in accordance with 39 C.F.R. §955.12. Only entitlement is at issue in this proceeding.

FINDING OF FACT

1. On December 1, 1999, Contracting Officer Larry L. Andrews[3] accepted, on behalf of Respondent, an offer by Appellant to sell to the Postal Service approximately 3.5 acres of land in the city of Amarillo, Texas. Respondent intended to use the property as the site of a new post office. Paragraph 21 of the contract provided,

> "Seller shall ensure that adequate water and sewerage service are available to the site and that electrical service and natural gas can be brought to the site by the Postal Service." (Appeal File Tab (AF) 1).

The parties closed on the property and title passed to Respondent on or about February 16, 2000. At the time of closing, the property included three utility easements which Appellant was authorized to access in order to extend utilities to adjacent properties. (AF 5,6).

---

[3]Mr. Andrews was the Postal Service contracting officer for the acquisition of the land. David Bright was the contracting officer for the construction of the post office building on the property. Unless otherwise indicated, references to the "contracting officer" in this Opinion refer to Mr. Andrews.

2. The property was bounded on the north by Amarillo Boulevard, and on the south by a property that Appellant had sold to another entity, ESA Texas, Inc. (ESA), for the construction of a hotel. At the time of the property sale to Respondent, there was a 16-inch water main running along Amarillo Boulevard, immediately north of the Postal Service property. In addition, a sewer line ran to a point near the northeast corner of the property and terminated in a manhole. (AF 14 (¶ .A and attachment); Deposition of Joseph Laehr (Laehr Deposition), p 14, Exhibit A; Appellant's response to Respondent's interrogatories (Appnt. Response), p.3). These lines satisfied Appellant's obligation under the contract of sale to ensure that water and sewerage service were "available to the site." (AF 18, 19).

3. Sometime between December 1, 1999, and February 16, 2000 (when the closing occurred), the parties had a discussion concerning how to connect the utility lines to provide service to both the Postal Service and ESA sites. Participating in the conversation were the contracting officer and the contracting officer's representative/project manager (COR), for Respondent, and Mr. George Chapman and another person who was an employee of Appellant, for Appellant. Mr. Chapman advised Respondent's representatives that he believed the city of Amarillo would require that water and/or sewer lines be run in a loop around the perimeter of both tracts. He proposed that Appellant design and contract the water and sewer lines and that the parties share the cost on a *pro rata* basis. Respondent's representatives agreed to consider the proposal, but stated that they would have their engineers and architects check with the City and that they would get back to Mr. Chapman once they decided what to do. (Deposition of Larry Andrews (Andrews Deposition), p. 17-20; Laehr Deposition, pp. 30-32; *contra,* Appnt. Response, p.3).

4. On or about December 22, 1999, engineers for Appellant developed an estimate of the cost of installing the utility lines around both properties. The estimate for installing the portion of the water and sewer lines that ran through the Postal Service property was $42,451.00. (AF 15).

5. By letter dated March 3, 2000, Mr. Chapman wrote to the contracting officer as follows:

> "In conjunction with Extended Stay America and United States Post Office to facilitate Extended Stay America's starting construction before Post Office, Extended Stay America and myself had Keys & Shehan Engineering, construct a set of drawing for water and sewer.....
>
> Enclosed is an invoice for United States Post Office portion of those drawings....."

Enclosed with the letter was an invoice for $4,000 from Keys & Shehan Engineering addressed to "G. R. Chapman Limited Partnership." The invoice stated that it was for "Post Office portion of utilities for Post Office & Extended Stay America. Cost opinion for construction is $42,451.00." (AF 7). When the contracting officer received the letter, he wrote across the front, "No Post Service Responsibility" and forwarded it to the COR (Andrews Deposition, pp. 24-25).

6. Appellant contracted with a construction company to extend the sewer line from its initial termination point (at the Postal Service property's northeast corner) west along the northern edge and then south along the Postal Service property's western border and continuing onto the ESA property. The first part of this extension (along the northern edge) would have been required by the

City of Amarillo in order to serve the new post office, with or without the need to also serve the new hotel on the ESA property. Appellant also contracted to run water lines south from the existing 16-inch main (along Amarillo Boulevard), along both the eastern and western boundaries of the Postal Service property onto the ESA property. These water lines were not required by the City of Amarillo in order to serve the new post office. (Appnt. Response. p.4: AF 14, ¶¶1.A, 1.B, 1.D, 1.E; Laehr Deposition, pp.28-32, 48). Installation of the water and sewer lines occurred sometime between April 4, 2000, and May 25, 2000 (AF 14, ¶¶1.B, 1.D; Laehr Deposition, pp. 17, 31, 32).

7. Respondent planned to connect the new post office building to the water and sewer lines running along Amarillo Boulevard. During construction, Respondent considered the possibility of connecting to the water and sewer lines that Appellant had installed along the western edge of the property, but ultimately decided not to do so. (AF 14, 15,¶ 17; Laehr Deposition, Exhibit A)

8. On or before July 12, 2000, the contracting officer authorized payment of the $4,000.00 invoice from Keys & Shehan Engineering (Finding 5). He did so after consulting with the COR and coming to the conclusion that the invoice was probably for the work in designing the sewer line that had been installed by Appellant along the northern edge of the property. That line was required by both the Postal Service and ESA, and the contracting officer believed that it was appropriate for the Postal Service to share in that expense. (Andrews Deposition, pp. 25, 41, 42, Exhibit A).

9. On or about July 12, 2000, Appellant sent Respondent an invoice in the amount of $38,428.00 as Respondent's portion of the cost of installing the utilities. By letter dated September 1, 2000, Contracting Officer

David Bright stated that Respondent would be willing to share equally in the cost of installing the sewer line along the northern edge of the Postal Service property, since that line was required in order to serve both the Postal Service and ESA properties. Contracting Officer Bright offered by pay $4,298 as Respondent's share, but declined to pay any other costs. (AF 13, 16).

10. By letter from counsel, dated March 12, 2001, Appellant again sought payment in the amount of $38,428.00, on the basis that there had been an agreement between the parties that Respondent would pay its *pro rata* share of the costs and that the amount sought was Respondent's share. In a final decision dated June 20, 2001, Contracting Office Larry Andrews denied Appellant's claim on the basis that the Postal Service had never agreed to share the costs of installing the utilities in a loop around the property. (AF 18, 19). Appellant filed a timely appeal.

DECISION

Appellant argues the existence of an implied-in-fact contract between the parties, under which Appellant agreed to design and construct the water and sewer lines in a loop around both the Postal Service and ESA properties, and Respondent agreed to pay its *pro rata* share of the costs. Appellant argues that this agreement was made during a telephone conversation between, among others, Mr. George Chapman, represent Appellant, and Contracting Officer Larry Andrews, representing the Postal Service. Appellant contends that as a result of the contract, it installed utilities along the northern, east and west sides of the Postal Service property, and that Postal Service personnel were aware that the work was going on. Appellant also argues that Respondent affirmed the existence of the contract when, in July 2000, it paid the March 2000 invoice that Appellant

had stated was for Respondent's portion of the design work for the utilities. Appellant argues that Respondent was, therefore, liable for the payment of its share of the costs.

Respondent argues that the evidence does not support Appellant's claim that there was a contract, either express or implied, between the parties regarding the installation of the utility lines. Respondent contends specifically that the evidence does not support Appellant's contention that the contracting officer accepted Mr. Chapman's proposal that the Postal Service pay Appellant a *pro rata* share of the costs involved.

In this appeal, as the party seeking recovery, Appellant has the burden of proving the existence of a contract between the parties. Whether the alleged contract is express or implied-in-fact, Appellant's burden is the same. It must show a mutuality of intent to contract, offer and acceptance, consideration, and that Respondent's representative had actual authority to bind Respondent. Hanlin v. United States, 316 F.3d 1325, 1328 (Fed. Cir. 2003); Howard Nettleton, PSBCA No. 3454, 92-2 BCA ¶ 27,909.

In this instance, Appellant has failed to prove the existence of the contract it alleges. Specifically, we agree with Respondent and conclude that Appellant has failed to demonstrate that the contracting officer accepted Mr. Chapman's proposal. We have found, by a preponderance of the evidence, that the contracting officer did not accept Mr. Chapman's proposal during their conversation but, instead, indicated that the Postal Service would first check with the City of Amarillo to determine exactly what would be the requirements imposed on the Postal Service in order to have utilities serve its property. Further, there is no evidence that Respondent's personnel resumed the dialog with Appellant regarding utilities after having determined

what the City would require.

Appellant places great emphasis on the fact that, in July 2000, the contracting officer authorized payment of the invoice Respondent had received in March 2000. Appellant views this as confirmation that the contracting officer believed there was a contract between the parties. Appellant contends that the Board should not consider evidence of the contracting officer's subjective reasons for authorizing the July payment as evidence in determining whether the contracting officer believed there was a contract between the parties. We are not persuaded by Appellant's argument. The issue before the Board is whether there was, in fact, a contract between the parties, and the Board may consider, and has considered, both the fact that the payment was made and Respondent's reason for making it - *i.e.*, the belief by the contracting officer that the payment represented the Postal Service share of costs associated with designing the sewer line along Amarillo Boulevard. Respondent's payment, therefore, does not compel a conclusion that Respondent entered into a contract to pay a *pro rata* share of the utilities loop.

Appellant has not demonstrated the existence of a contract under which Respondent was obligated to pay a *pro rata* share of the cost of installing the sewer and water lines. In the absence of such a contract, the Board lacks jurisdiction to consider the appeal. Coastal Corp. v. United States, 713 F.2d 728 (Fed. Cir. 1983); See, also, Alta Construction Co., PSBCA No. 1463; 90-1 BCA ¶ 22,527 at 113,064.

Accordingly, the appeal is dismissed.

s/ David I. Brockstein
David I. Brockstein
Administrative Judge

Vice Chairman

I concur:

s/ James A. Cohen

James A. Cohen
Administrative Judge
Chairman

I concur:

s/ Norman D. Menegat

Norman D. Menegat
Administrative Judge
Board Member

UNITED STATES
_POSTAL SERVICE

June 20, 2001

CERTIFIED # 7000
0520 0024 6104 8872
RETURN

RECEIPT REQUESTED

Chapman Children's Trust II
c/o Kent Canada
Hancock & Canada, PC
302 S. Polk, Suite 320
P. O. Box 2330
Amarillo, TX 79105-2330

Re: USPS Jordan Station Post Office, Amarillo, Texas
Water and sewer utilities

Dear Mr. Canada:

Our office has received your letter of March 12, 2001, requesting that the Postal Service pay the Chapman Children's Trust II ("Seller") the amount of $38,428.00 allegedly owing for the cost of installing water and sewer lines in a loop around the outside boundaries of the Jordan Station Post Office site. The Postal Service made no agreement with your client - oral or written - to pay for the installation of water and sewer lines in a loop outside of its property's boundaries. Thus, the Postal Service does not owe your client the $38,428.00 you have requested for such installation.

On December 1, 1999, the Postal Service accepted your client's September 13, 1999 offer to sell unimproved real property to the Postal Service for the construction of the

new Jordan Station Post Office in Amarillo (the "real estate contract"). We are attaching for your referenced a diagram of the property that you attached to your letter as Exhibit "A." Paragraph 21 of the real estate contract required that the Seller insure the "adequate water and sewage services" were available to the Postal Service site. Your client brought water and sewer lines to the northeast corner of the property, thus satisfying that contract provision.

Before the original design for the construction of the post office was completed, George Chapman telephoned the facilities office and spoke with Joe Laehr (the project manager for the construction) and me (as contracting office on the real estate purchase). Mr. Chapman predicted that, for fire protection, the City of Amarillo was going to require the Postal Service to install water and sewer lines in a loop around the outside property boundaries. He indicated he would be making the same installation for the property immediately south of the Postal Service property that he was developing for an extended-stay hotel.

Mr. Chapman also suggested that, with a water line running down the western boundary of the Postal Service property, the Postal Service might want to consider running water lines to the new post office from that line rather than from the water line that would be installed along the northern boundary (along Amarillo Boulevard). See Exhibit "A." I told Mr. Chapman during that conversation that the design for the new facility wasn't completed yet, but it would reflect what the Postal Service had to do to comply with the city requirements. I also told Mr. Chapman that we would review our options as to how best to bring water to the new building and would do what made the most sense.

After this telephone conversation, Bill Franz, the architect-engineer hired by the Postal Service to prepare the original construction drawings, talked with the city to determine

what it would require of the Postal Service in terms of water and sewer installation. Mr. Franz confirmed with the fire marshall that the city would require only that the Postal Service install water and sewer lines along the northern boundary of the property. The city would not require that the Postal Service install a water and sewer line loop around the property.

Based on his conversation with the city, Mr. Franz completed the original construction design with water and sewer lines running only along the northern boundary of the property parallel with Amarillo Boulevard. A construction contract was awarded based on the A/E's design (the "construction contract"). The original design called for the water lines to the new building to connect with the water line that was going to be installed across the norther boundary of the property. As David Bright explained in his letter of September 1, 2000, the Postal Service considered whether it made any sense to modify the construction contract to bring the water in from a water line running along the western boundary of the property. We determined that it did not make sense and decided to keep the water lines to the building as originally designed in the construction contract (i.e., from the water line running along Amarillo Boulevard.

As Mr. Bright also explained in his letter, it was the Postal Service's understanding that the water installed across the northern boundary of the property would also be needed by Mr. Chapman for his hotel to the south of our property. The costs of installing that line were estimated by the A/E as $8,596.00. Mr. Bright therefore proposed in his September letter that the costs be split between the two parties - $4,298.00 each.

As for the $4,000.00 invoice submitted by Mr. Chapman, the Postal Service apparently paid that bill in error. The

Postal Service was going to do its own design and construction for that northern boundary water line. However, Mr. Chapman had already started putting in the water lines, and the Postal Service assumed the invoice reflected the cost of engineering fees Mr. Chapman had incurred to design the water and sewer lines along the northern boundary of the property. The Postal Service paid that invoice only because it believed both it and Mr. Chapman would be responsible jointly for costs associated with design and installation of those utility lines.

The Postal Service never agreed, however, to share in the cost of installing water and sewer lines along the western and southern boundaries of the property. First, the city did not require the Postal Service to install those lines. Second, the Postal Service received no benefit from the additional water lines proposed by Mr. Chapman, particularly once it determined that it made more sense to bring water to the building from the northern boundary rather than from the western boundary.

The Postal Service made no agreement with your client to share in the cost of designing or installing water and sewer lines in a loop around its property. The Postal Service therefore does not owe your client the amount of $38,428.00 that you have requested.

This is the final decision of the contracting officer pursuant to the Contract Disputes Act of 1978. You may appeal this decision to the Postal Service Board of Contract Appeals by mailing or otherwise furnishing written notice (preferably in triplicate) to the contracting officer within 90 days from the date you receive this decision. The notice should identify the contract by number, reference this decision, and indicate that an appeal is intended. Alternatively, you may bring an action directly in the United States Court of Federal Claims within 12 months

from the date you receive this decision.

In taking an appeal to the Board of Contract Appeals, you may include in your notice of appeal an election to proceed under the Board's Small Claims (expedited) procedure, which provides for a decision within approximately 120 days, or an election to proceed under the Board's accelerated procedure, which provides for a decision within approximately 180 days. If you do not make an election in the notice of appeal, you may do so by written notice anytime there after.

Sincerely,

s/ Larry Andrews
Larry Andrews
Contracting Officer
Dallas FSO

cc: David Wayne Bright
Joseph R. Laehr, Project Manager, Dallas FSO
Judith K. Zehner, USPS Law Department
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